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Federal Communications Commission

DA 99-1298

DISPATCH

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Appointment of the)	
Telecommunications Relay Services (TRS))	CC Docket No. 90-571
Fund Administrator and Composition of the)	
Interstate TRS Advisory Council)	

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 1999

Released: July 1, 1999

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On February 4, 1999, the Commission issued a public notice requesting proposals from parties interested in being appointed Telecommunications Relay Services (TRS) Fund Administrator (Administrator) at the end of the current Administrator's term.¹ The public notice also requested comment on whether the Interstate TRS Advisory Council (Council) should be expanded by adding an additional reimbursable position to the hearing and speech disability community category for a representative from the speech disability community.² The National Exchange Carrier Association, Inc. (NECA) filed a proposal to be reappointed Administrator. Forty comments and six reply comments were also filed.³ In this Memorandum Opinion and

¹ See FCC Requests Proposals for Telecommunications Relay Services (TRS) Fund Administrator and Comments on the Authorization of an Additional TRS Advisory Committee Member to Represent the Speech-Disability Community, CC Docket No. 90-571, *Public Notice*, DA 99-297 (rel. Feb. 4, 1999).

² The current Council members are reimbursed for the reasonable costs they incur in attending Council meetings. 47 C.F.R. § 64.604(c)(4)(iii)(H).

³ Comments were filed by Annalee Allen, Dr. Bill Asenjo, AT&T Corp. (AT&T), James Barton, Michael Brody, Jim Cohen, Carole Glauber, Dr. Harold Glauber, Dr. Stanley Greenberg, Hamilton Telephone Company (Hamilton), Dr. Judith E. Harkins, James Hasse, Dr. Leonard Kasday, Jim Kenefick, Cricket and Wes Keyson, Isadora Kunitz, Rebecca Ladew, Mary Lester, Larry Littleton, Verda McGraw, MCI WorldCom, Inc. (MCI), Neil Marcus, Birdie J. Minor, Brenda Monene, Kate Moore, Darlette Navrotski, Dr. Robert W. Park, Valerie Perdue, Dan Phillips, John F. Quinn, Jackie Rennick, Barry Romich, Dr. Howard Sage, Sharon F. Salter, Trici Schraeder, Lorie Brand Shepard, Dr. Gary Soodak, Sprint Corp. (Sprint), Celine Sullivan, Dr. Dolores Kluppel Vetter. Reply comments were filed by the Council of Organizational Representatives on National Issues Concerning People who are Deaf and Hard of Hearing (COR), the Interstate TRS Advisory Council, MCI, NECA, the National Telephone Cooperative Association (NTCA), the President's Council on Employment of People with Disabilities, Telecommunications for the Deaf, Inc. (TDI). TDI filed reply comments dated March 16, 1999, along with a Request for Acceptance of Late-Filed Reply Comments. In addition, NECA filed supplemental pleadings on March 31, 1999 and MCI filed supplemental pleadings on April 13, 1999. In the interest of having as complete a record as possible, we will accept the late-filed reply comments and supplemental pleadings into the record.

Order, we reappoint NECA to be the Administrator for another four-year term. In addition, we authorize the Administrator to add an additional reimbursable position to the Council, in the hearing and speech disability community category, for a representative from the speech disability community.

II. BACKGROUND

2. TRS is a telephone transmission service that allows people with hearing or speech disabilities to use the telephone. TRS facilities are equipped with special equipment and staffed by communications assistants (CAs) who relay conversations between people who use text telephones and people who use voice telephones. The TRS Fund is a shared funding mechanism for recovering the costs involved in providing interstate TRS.⁴ All carriers providing interstate telecommunications service are required to contribute a portion of their gross interstate revenues to the TRS Fund.⁵ TRS providers receive payments from the Fund designed to compensate them for the reasonable costs incurred in providing interstate TRS service.⁶

3. When the TRS Fund was established, the Commission appointed NECA to be the Administrator for an interim two-year term beginning July 26, 1993 and ending July 25, 1995.⁷ The Administrator's responsibilities include collecting contributions from carriers, distributing funds to TRS providers, and filing proposed payment formulas and revenue requirements with the Commission.⁸ Pursuant to requirements contained in the Commission's rules, the Administrator has established a voluntary advisory council to monitor TRS cost recovery issues.⁹ The Council consists of persons from the following groups: (1) the hearing and speech disability community; (2) TRS users; (3) interstate service providers; (4) TRS providers; and (5) state representatives.¹⁰ Although Council members are not paid for their services,¹¹ the Commission has authorized NECA to reimburse up to two individuals from each of the above groups for the

⁴ 47 C.F.R. § 64.604(c)(4)(ii).

⁵ *Id.* § 64.604(c)(4)(iii)(A)-(B)

⁶ *Id.* § 64.604(c)(4)(iii)(E).

⁷ See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, *Third Report and Order*, 8 FCC Rcd 5300, 5300-01 (1993) (*Third Report and Order*).

⁸ 47 C.F.R. § 64.604(c)(4)(iii).

⁹ *Id.* § 64.604(c)(4)(iii)(H).

¹⁰ *Id.*

¹¹ *Id.*

reasonable costs they incur in attending Council meetings.¹²

4. In the *Third Report and Order*, the Commission stated that it would review NECA's performance at the end of the interim term, and would request comments on that performance as well as proposals from other parties interested in serving as Administrator.¹³ The Commission requested comment on NECA's performance, and proposals from other parties, in a public notice released February 3, 1995.¹⁴ The public notice also requested comment on whether the Council should be expanded by adding two reimbursable positions for state relay administrators. NECA filed a proposal to be reappointed Administrator. In a Memorandum Opinion and Order, we reappointed NECA Administrator for a four year-term beginning July 26, 1995 and ending July 25, 1999.¹⁵ In addition, we authorized NECA to add two additional reimbursable positions to the Council for state relay administrators.¹⁶ We again indicated that we would review NECA's performance at the end of its term.¹⁷

III. APPOINTMENT OF THE TRS FUND ADMINISTRATOR

6. *NECA Proposal.* NECA proposes that it be reappointed as Administrator of the TRS Fund.¹⁸ In support of its proposal, NECA asserts that its performance to date demonstrates its ability to perform as Administrator.¹⁹ In particular, NECA asserts that, as part of its performance as Administrator, it has established methods and procedures for the identification of the costs of TRS providers, developed compensation formulas, collected funds from over 3,000 telecommunications service providers, and distributed TRS funds efficiently on a monthly basis.²⁰ In addition, NECA claims that the proposed compensation levels it provides to the Commission pursuant to 47 C.F.R. § 64.604(c)(iii)(E) have all been approved as filed, and that the data in its

¹² See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, *Second Order on Reconsideration and Fourth Report and Order*, 9 FCC Rcd 1637, 1639-40 (1993).

¹³ *Third Report and Order*, 8 FCC Rcd at 5301.

¹⁴ See FCC Requests Proposals for Telecommunications Relay Services (TRS) Fund Administrator and Comments on Composition of the TRS Advisory Council, *Public Notice*, Mimeo No. 51973 (rel. Feb. 3, 1995).

¹⁵ See Appointment of the Telecommunications Relay Services (TRS) Fund Administrator and Composition of the TRS Advisory Council, CC Docket No. 90-571, *Memorandum Opinion and Order*, 10 FCC Rcd 7223 (1995).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See NECA Comments at 2.

¹⁹ *Id.* at 4.

²⁰ *Id.*

filings are used by the Commission to determine contribution formulas for TRS.²¹ Finally, NECA contends that it ensures that TRS providers are audited at least once every three years to verify the accuracy of reported data.²²

7. *Comments.* The majority of the commenters speak favorably of NECA's performance as Administrator and indicate strong support for NECA's reappointment.²³ Specifically, AT&T acknowledges NECA's efforts to implement the Commission's TRS funding plan in a fair and neutral manner, an acknowledgement with which NTCA and TDI agree.²⁴ Sprint indicates that NECA has the necessary systems and procedures in place to administer the fund, and that its operational and financial performance has been satisfactory.²⁵ Hamilton asserts that it has found NECA to be "a careful and competent TRS Administrator."²⁶ The Interstate TRS Advisory Council claims that NECA has been responsive to its needs for information, has neutrally administered the fund, and has been consistently below budget.²⁷

8. MCI, however, argues that NECA is associated with an industry group of incumbent local exchange carriers and that the public interest will be better served by a neutral third-party administrator.²⁸ MCI urges the Commission to reappoint NECA for only one year because: 1) the Commission cannot be certain that NECA is minimizing costs of administering the fund without a competing proposal; 2) the Commission should have provided more time for compliance with the requirements for the proposal in its public notice; and 3) the Commission's Disabilities Issues Task Force failed to encourage the TRS Advisory Council to publicize for the submission of bids from third parties.²⁹

9. NECA, in response to MCI's contention that there was insufficient time for parties to submit proposals for Administrator, argues that parties interested in becoming Administrator

²¹ *Id.*

²² *Id.* at 4-5.

²³ Comments concerning appointment of the Administrator were filed by AT&T, Hamilton, Interstate TRS Advisory Council, MCI, NECA, NTCA, Sprint, and TDI.

²⁴ See AT&T Comments at 1; NTCA Reply at 2; TDI Reply at 3.

²⁵ See Sprint Comments at 1-2.

²⁶ See Hamilton Comments at 2.

²⁷ See Interstate TRS Advisory Council Comments at 1.

²⁸ See MCI Comments at 2.

²⁹ See MCI Reply at 2-4; MCI Supplement at 1.

had almost four years to formulate a proposal.³⁰ Moreover, NECA contends, interested parties had the opportunity each year to review its annual reporting of expenditures incurred in administering the fund. Furthermore, NECA asserts that the Commission knows that the costs of administering the fund are being minimized because its expenditures are below budgeted levels each year.³¹ NECA indicates that it returns any surplus administrative expenses to contributors by lowering the funding requirement for the following period.³²

10. *Decision.* The record indicates that NECA has performed satisfactorily during its four-year term. As required by the Commission's rules, NECA has collected and distributed TRS funds, established the Council, and filed payment formulas and other required data with the Commission.³³ NECA has also provided the Commission with access to the data collected,³⁴ and has made this data available to the Commission in a useful and convenient form. We also note that NECA has operated within its established budget, and that an independent auditor has found that NECA's TRS financial statements are in accord with generally accepted accounting principles. Moreover, NECA was the only entity to file a proposal requesting appointment as Administrator. Based on the forgoing, we conclude that the public interest will be served by NECA's reappointment as Administrator of the TRS Fund for another four-year term.

11. In deciding on the length of the term to which NECA will be appointed, we decline to accept MCI's recommendation that NECA be reappointed for only one year. We believe that NECA's performance of record supports a longer term, and as in previous years, a longer term will provide consistency in data collection and procedures in the administration of the TRS Fund. This consistency should enable all parties to operate more efficiently. We note that NECA will continue to be subject to yearly audits pursuant to 47 C.F.R. § 64.604(c)(4)(iii)(D). Under these circumstances, we conclude that another four-year term is reasonable. Accordingly, we are appointing NECA to a four-year term, beginning July 26, 1999 and ending July 25, 2003. Toward the end of this term, we will again review NECA's performance.

IV. COMPOSITION OF THE TRS ADVISORY COUNCIL

12. *Comments.* The majority of commenters addressing whether to add an additional reimbursable position to the Council from the speech disability community supported the

³⁰ See NECA Supplement at 1.

³¹ *Id.*

³² *Id.* at 1-2.

³³ See 47 C.F.R. § 64.604(c)(4)(iii).

³⁴ See *id.* § 64.604(c)(4)(iii)(H).

proposal.³⁵ The commenters generally indicate that the Council is deserving of a representative from the speech disability community because the Commission's published regulations regarding hearing carry over and the expected regulations concerning speech-to-speech (STS) relay services affect this community.³⁶ Sprint states that the additional representative would be useful given the increased availability and use of STS.³⁷ AT&T recommends that the Commission permit an additional representative from the speech-disability community to assist the Council in monitoring the availability of STS relay services in the marketplace during the two-year implementation period that is tentatively proposed for STS.³⁸

13. MCI, on the other hand, contends that the hearing and speech disability community category was originally created to include representatives from either of, or both, the hearing and speech disability communities. Therefore, it argues, the category should already consider the interests of users with speech disabilities.³⁹ It claims that, because the purpose of the Council is to monitor cost recovery issues associated with TRS, one segment of the hearing and speech disability community can effectively represent the interests of the another segment. Thus, MCI concludes, an expansion of the Council is unnecessary.⁴⁰

³⁵ Comments addressing this issue were filed by Annalee Allen, Dr. Bill Asenjo, AT&T, James L. Barton, Michael Brody, Jim Cohen, Carole Glauber, Dr. Harry Glauber, Dr. Stanley Greenberg, Dr. Judith E. Harkins, James R. Hasse, Dr. Leonard Kasday, Jim Kenefick, Cricket and Wes Keyson, Isadora Kunitz, Rebecca Ladew, Mary Lester, Larry Littleton, Verda McGraw, MCI, Neil Marcus, Birdie Minor, Brenda Monene, Kate Moore, Darlette Navrotsky, Dr. Robert W. Park, Valerie Perdue, Dan Phillips, John F. Quinn, Jackie Rennick, Barry Romich, Dr. Howard Sage, Sharon Salter, Trici Schraeder, Lorie Brand Shepard, Dr. Gary Soodak, Sprint, Celine Sullivan, Dr. Dolores Kluppel Vetter.

³⁶ Hearing carry over (HCO) is a reduced form of TRS that can be used by some individuals with speech disabilities. In HCO, the person with the speech disability is able to listen to the other end user, and in reply, the CA speaks the text as typed by the person with the speech disability. 47 C.F.R. § 64.601(6). The Commission's rules require TRS providers to offer HCO. *Id.* § 64.604(b)(5). STS relay services involve the use of specially-trained CAs as "relay" voices for persons with speech disabilities, including individuals who use voice synthesizers. The specially-trained CA understands the speech of individuals with speech impairments or who use voice synthesizers, and repeats the words spoken to ensure that the callers are understood. Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996, CC Docket No. 90-571, *Notice of Inquiry*, 12 FCC Rcd 1152 (1997).

³⁷ See Sprint Comments at 2.

³⁸ See AT&T Comments at 3. The Commission has tentatively concluded that all common carriers providing voice transmission services must ensure that STS services are available to callers with speech disabilities throughout their service areas, within two years of a *Report and Order* mandating such services. See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, *Notice of Proposed Rulemaking*, FCC 98-90 (rel. May 20, 1998).

³⁹ See MCI Comments at 3.

⁴⁰ *Id.*

14. *Decision.* The record indicates that a member from the speech disability community can provide considerable guidance concerning the unique needs of that community. Given the Commission's existing regulations affecting this community, and in light of the possible mandate for nationwide STS relay services, we agree. Although the Council has a membership category that includes persons with hearing and speech disabilities, no current member of the Council has a speech disability. Because users with hearing and speech disabilities have different relay needs that could be reflected in the financial issues dealt with by the Council, we believe that the Council must include a member who is intimately familiar with the characteristics and needs of this group. We are persuaded that a representative from the speech disability community could assist the Council by providing the knowledge and necessary perspective that cannot be obtained from someone who does not represent this community. In addition, we note that the majority of the commenters addressing this issue favors this authorization. Accordingly, we authorize NECA to add an additional reimbursable position to the Council, in the hearing and speech disability category, for a representative from the speech disability community.

V. CONCLUSION

15. For the foregoing reasons, we appoint the National Exchange Carrier Association (NECA) to be the TRS Fund Administrator for a four-year term beginning July 26, 1999 and ending July 25, 2003. In addition, we authorize the Administrator to add an additional reimbursable position to the Interstate TRS Advisory Council, in the hearing and speech disability community category, for a representative from the speech disability community.

VI. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to Section 64.604(c)(4)(iii) of the Commission's Rules, 47 C.F.R. § 64.604(c)(4)(iii), and the authority delegated by Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, that the National Exchange Carrier Association (NECA) is appointed TRS Fund Administrator for a four-year term beginning July 26, 1999 and ending July 25, 2003.

17. IT IS FURTHER ORDERED, that the TRS Fund Administrator is authorized to add an additional reimbursable position to the Interstate TRS Advisory Council, in the hearing and speech disability community category, for a representative from the speech disability community.

FEDERAL COMMUNICATIONS COMMISSION

Lawrence E. Strickling
Chief, Common Carrier Bureau